REMARKS

This Amendment is being filed along with a Request for Continued Examination (RCE) to place the above-captioned application in condition for allowance.

In the Final Office Action mailed March 23, 2006, the Examiner rejected claims 1-3, 5[1], and 7-15 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,471,782 to Kitaevich et al.; rejected claims 4, 6-9[2], and 11-15 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 7-10 of U.S. Patent No. 6,730,233 to Pedrazzi; rejected claims 5, 16, and 17 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 7 of U.S. Patent No. 6,730,233 to Pedrazzi in view of Kitaevich; and rejected claims 9, 11, and 12 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 4 and 5 of U.S. Patent No. 6,966,979 to Pedrazzi.

At the outset, Applicants thank the Examiner for conducting a telephone interview with the undersigned on April 18, 2006, in this case. During the telephone interview, the undersigned pointed out that claims 1-17 are distinguishable over Kitaevich. The Examiner agreed and indicated that claims 1-17 would be allowable subject to various amendments to claims 9, 10, and 12-14. Applicants have made these claim changes, as indicated in the Amendment to the Claims section of this Amendment. The Examiner also indicated that the above-noted double pateting objection would be withdrawn if an appropriate Terminal Disclaimer were filed. (See also Final Office Action at 4-6.)

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[1] Applicants submit that claim 5 depends from claim 4. Because claim 4 was not rejected under 35 U.S.C. § 102(b), Applicants assume that the rejection of claim 5 under § 102(b) was made in error. In any case, based on this Amendment, claim 5 is allowable at least due to its dependence from claim 1.

[2] Applicants submit that rejections of claims 4, 6, 7, and 8 appear to be in error since these claims depend from claim 1, which was not rejected under double patenting.

Claims 1-17 are pending in this application. By this Amendment, claim 1 is amended to more clearly recite Applicants' invention and claims 9, 10, and 12-14 are amended in accordance with the Examiner's suggestions. Accordingly, this application is in condition for allowance.

For completeness, however, Applicants present below the point raised during the interview highlighting differences between claims 1-17 and Kitaevich. As noted during the interview, Applicants respectfully traverse the Examiner's rejection of claims 1-3, 5, and 7-15 under 35 U.S.C. § 102(b) as being anticipated by Kitaevich. In order to properly anticipate Applicants' claimed invention under 35 U.S.C. § 102(b), each and every element of the claim in issue must be found, either expressly described or under principles of inherency, in a single prior art reference. Furthermore, "[t]he identical invention must be shown in as complete detail as is contained in the ...claim." See M.P.E.P. § 2131 (8th Ed., Aug. 2001), quoting *Richardson v. Suzuki Motor Co.*, 868 F.2d 1126, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). Finally, "[t]he elements must arranged as required by the claim." M.P.E.P. § 2131 (8th ed. 2001), p. 2100-69.

As further noted during the interview, Kitaevich at least fails to teach a method of controlling a dialysis machine including the steps of: "determining a value of a first parameter correlated with the controlled flow of the liquid component through the membrane; determining a value of a second parameter correlated with the flow of the liquid component at an inlet of the first compartment...calculating a filtration factor as a function of the value of the first and second parameters; and controlling the flow of the liquid component through the membrane or an inlet flow of the liquid to be filtered as a function of the filtration factor" (emphasis added), as recited in claim 1. Kitaevich is

silent as to calculating a third parameter as a function of the value of two measured parameters. In addition, Kitaevich fails to teach controlling the flow of liquid through a membrane as a function of this third parameter. Accordingly, Applicants submit that claim 1 is allowable and claims 2, 3, 7, and 8 are also allowable due at least to their dependence from claim 1.

Moreover, Applicants pointed out during the interview that Kitaevich fails to teach "a first calculator programmed to calculate a filtration factor as a function of the value of the first and second parameters" and "a first controller programmed to control the flow of the liquid component through the membrane or the inlet flow of the liquid to be filtered as a function of the filtration factor" (emphasis added), as recited in amended claim 9. In addition, Kitaevich does not disclose calculation of a third parameter, filtration factor, that is a function of the value of a first parameter correlated with the liquid flow through the membrane and the value of a second parameter being at least one selected in the group comprising: hematocrit, hemoglobin, blood viscosity, blood electrical conductivity, and blood density, as required by claim 9. Kitaevich also does not teach a controller of liquid flow based on the calculated filtration factor, as further recited in amended claim 9. Accordingly, Applicants submit that claim 9 is allowable and claims 10-15 are also allowable due at least to their dependence from claim 9.

Applicants also respectfully submit that claims 16 and 17 are allowable over Kitaevich, at least due to the Examiner's failure to reject these claims based on this reference.

As noted above, the Examiner also rejected claims 4, 6-9, and 11-15 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over

claims 1 and 7-10 of U.S. Patent No. 6,730,233 to Pedrazzi (Pedrazzi '233); rejected claims 5, 16, and 17 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 7 of Pedrazzi '233 in view of Kitaevich; and rejected claims 9, 11, and 12 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 4 and 5 of U.S. Patent No. 6,966,979 to Pedrazzi (Pedrazzi '979).

Applicants respectfully disagree with the assertions made by the Examiner in formulating the double patenting rejections set forth at pages 4-6 of the Final Office Action. In order to expedite prosecution of this application, however, Applicants submit herewith a Terminal Disclaimer to obviate the double patenting rejections based on Pedrazzi '233 and Pedrazzi '979. The filing of the Terminal Disclaimer in no way manifests an admission by Applicant as to the propriety of the double patenting rejections. See M.P.E.P. § 804.02 citing Quad Environmental Technologies Corp. v. Union Sanitary District, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991). Applicant reserves the right to traverse the double patent rejections at a later date. Applicant respectfully requests the withdrawal of the double-patenting rejection in view of the Terminal Disclaimer attached hereto.

Prompt consideration of this Amendment and allowance of the application are earnestly requested. Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: June 1, 2006

By: _____
Aaron L. Parker
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Attachments: **Terminal Disclaimer (3 Pages)**